IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NOS. 170 AND 172 OF 2003.

CRIMINAL MISCELLANEOUS APPLICATION NO. 170 OF 2003.

Shri Vilas V. Sardessai,
Printer and Publisher of
Daily 'The Navhind Times',
M/s. Dempo Industries Ltd.,
Navhind Bhavan, Rua Ismael
Gracias, Panaji. ... Applicant.

Versus

1. Shri P.L.G. Manu,
   Managing Director,
   M/s. Penguin Alcohols Pvt. Ltd.,
   Canacona.
2. M/s. Penguin Alcohols Pvt. Ltd.,
   through its Managing Director
   Shri P.L.G. Manu,
   Margao.
3. State of Goa through P.P. ... Respondents.

CRIMINAL MISCELLANEOUS APPLICATION NO. 172 OF 2003.

Shri Arun Sinha,
Editor of Daily
'The Navhind Times',
M/s. Dempo Industries Ltd.,
Navhind Bhavan, Rua Ismael
Gracias, Panaji. ... Applicant.

Versus

1. Shri P.L.G. Manu,
   Managing Director,
   M/s. Penguin Alcohols Pvt. Ltd.,
   Canacona.
2. M/s. Penguin Alcohols Pvt. Ltd.,
   through its Managing Director
   Shri P.L.G. Manu,
   Margao.
3. State of Goa through P.P. ... Respondents.

Mr. Menino Teles, Advocate for the Applicant in both Applications.

Mr. M.S. Sonak with Miss Pooja Bharne, Advocates for the Respondents 1 and 2.

Mrs. W. Coutinho, Additional Public Prosecutor for the Respondent No. 3 State.

Coram : P.V. HARDAS, J.

Date : 21st August 2003.

ORAL JUDGMENT.

Both these applications arise against a common Order, passed by the learned Judicial Magistrate, First Class, Canacona, dated 14th July 2003, in Criminal Case No. 23/P/2001. Since the applicants in both the applications are original accused before the learned trial Court and also since the learned trial Court has disposed of the applications seeking permanent exemption by a common Order, both these applications can be decided by a common judgment.

2. Parties had been put to notice that these applications would be decided finally at the stage of admission. Accordingly, with the consent of the learned counsel for the parties, both these applications are taken up for finally hearing at the stage of admission.

3. An application under Section 205 of the Code of Criminal Procedure came to be filed by the present applicants seeking permanent exemption from appearance in the abovementioned case, which was filed by the non-applicants/complainants for an offence punishable under Section 499 of the Indian Penal Code. In the said application the reasons stated by the applicants were that the applicant in Criminal Miscellaneous Application

No. 170 of 2003 is a Printer and Publisher of a daily newspaper called 'The Navhind Times'. The applicant in Criminal Miscellaneous Application No. 172 of 2003 is the Editor of the said daily newspaper. Both the applicants are actively associated with many sports and cultural activities and other events and they are also required to travel frequently within and even some times abroad on account of their professional and business related work. The learned trial Court permitted the respondents/complainants to file their reply and after consideration of the application and the reply rejected the application filed by the present applicants under Section 205 of the Code of Criminal Procedure.

4. The learned trial Court in its Order, which is impugned in the present applications, has found that the reasons given by the applicants, namely, that they are Printer and Publisher and Editor of the newspaper, they are actively associated in many sports and cultural activities and that they are required to travel within the country and abroad are not good and sufficient grounds for granting permanent exemption to the applicants. The learned trial Court has further held that the applicants could seek exemption during the course of hearing as and when the applicants were required by showing sufficient or good cause for their absence and the applicants could not seek a blanket

exemption without showing any sufficient cause or good ground.

5. The learned counsel appearing on behalf of the applicants has urged before me (1) that Section 205 of the Code of Criminal Procedure does not contemplate giving good and sufficient cause for exemption from personal appearance from the Court; (2) that the attendance of the applicants before the trial Court was not necessary on each and every date and (3) the complainant would not be prejudiced in the event the applicants were granted permanent exemption. In support of the said propositions, the learned counsel for the applicants has placed reliance on the Judgment of the Calcutta High Court in **Bimal Kumar Gupta v. Chandi Charan and The State of West Bengal,** 1987 (2) Crimes 686; **Raman Nair v. State of Kerala,** 2000 (2) Crimes 121 and **K. Narayan Patra v. Gopinath Sahu,** 1991 CRI.L.J. 3219.

6. In Bimal Kumar Gupta v. Chandi Charan and The State of West Bengal (supra), the learned Judge of the Calcutta High Court had quashed and set aside the Order of the learned Magistrate, who had insisted on the personal attendance of the accused at the time of deciding the application under Section 205 of the Code of Criminal Procedure. The learned Judge, therefore,

observed that the presence of the accused at the time of decision of the application under Section 205 of the Code of Criminal Procedure was not necessary. In Raman Nair v. State of Kerala (supra), the learned Judge of the Kerala High Court dismissed the challenge to an Order under Section 205 of the Code of Criminal Procedure, by which the learned trial Court had granted an exemption to the accused therein, who was not only the Chief Editor of the newspaper but was also the Chief Minister. In K. Narayan Patra v. Gopinath Sahu (Supra), the learned Judge of the Orissa High Court dismissed the challenge to the Order of the learned trial Court granting exemption to the accused, who was a Manager of a Nationalized Bank. In my opinion, therefore, the decisions cited before me cannot be applied to the facts of the present case as the facts stated therein can be distinguished.

7. Section 205 of the Code of Criminal Procedure permits the learned Magistrate to exercise his discretion in granting exemption to the accused from personal hearing. The Order granting exemption to an accused from appearance in the Court is primarily a discretionary Order, which is required to be passed by the Magistrate. Obviously the exercise of discretion has to be governed by the grounds or reasons stated in an application seeking exemption. The Magistrate is not

expected to act mechanically and grant exemption to the accused from appearing in the Court. Therefore, Section 205 of the Code of Criminal Procedure does not contemplate giving of good cause or reason. The ultimate test is the satisfaction of the learned Magistrate regarding the ground stated by the accused seeking exemption and this being the exercise of a discretionary power of a Court, the accused must state the circumstance to justify the exercise of the discretion. In other words the Magistrate has to be satisfied regarding the sufficiency and the truthfulness of the ground stated for seeking exemption.

8. In the present case the learned Magistrate has dismissed the application as the learned Magistrate found that the reasons stated in the application were extremely sketchy. All that was stated was that the applicants/accused were Printer and Publisher and Editor of a newspaper and were connected with various sports and cultural activities and required to travel frequently within India and abroad. The learned Magistrate has further held that the accused can seek exemption from the Court by filing an application in the event they were not able to attend the hearing of the case on any particular date. All that the Magistrate had done is that he has turned down the prayer of the applicants/accused for being granted permanent

exemption.

9. The present applications have been filed under Section 482 of the Code of Criminal Procedure. The exercise of discretion of the learned trial Court is assailed before me in these applications. Apart from the grounds stated in the applications, the learned counsel has not been able to point out any arbitrariness in the exercise of the discretion of the learned trial Court. In **Jacob Herold Aranha and another v. Mrs. Vera Aranha and another,**1979 CRI.L.J. 974, the Division Bench of this Court has held that inherent powers should be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities. The applicants have not been able to point out that the exercise of discretion by the learned trial Court is perverse or arbitrary necessitating any interference by the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure.

10. However, it is open to the applicants/accused to file an application before the learned trial Court giving details and stating grounds justifying the grant of permanent exemption from attending the proceedings in the trial Court. If such an application is filed, the learned trial Court shall decide the same, uninfluenced by any observations made by the trial Court in the Order

impugned in these applications.

11. With the aforesaid observations and liberty Criminal Miscellaneous Applications are dismissed.

(P.V. HARDAS)
JUDGE.

ed’s.